

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

In re VEHICLE TRACKING AND)
SECURITY SYSTEM ('844) PATENT)
LITIGATION,)
This Document Relates To:) MDL No. 11-2249 (DWF/SER)
PJC Logistics, LLC v. A. Due Pyle,)
Inc. et al., No. 11-2549 DWF/SER)
)

ANSWER AND COUNTERCLAIMS OF DEFENDANT FEDEx GROUND PACKAGE SYSTEM, INC.

Defendant FedEx Ground Package System, Inc. ("FedEx Ground") hereby answers the Complaint filed by Plaintiff PJC Logistics, LLC ("PJC"). FedEx Ground hereby responds to the allegations in the Complaint, and in doing so, denies the allegations of the Complaint except as specifically stated herein.

NATURE OF THE ACTION

1. FedEx Ground admits the allegation in paragraph 1 of the Complaint.

THE PARTIES

2. FedEx Ground lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 2 of the Complaint.

3. Paragraph 3 of the Complaint contains no allegations as to FedEx Ground and therefore does not require a response by FedEx Ground. To the extent a response is required, FedEx Ground lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 3.

4. Paragraph 4 of the Complaint contains no allegations as to FedEx Ground and therefore does not require a response by FedEx Ground. To the extent a response is required,

FedEx Ground lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 4.

5. Paragraph 5 of the Complaint contains no allegations as to FedEx Ground and therefore does not require a response by FedEx Ground. To the extent a response is required, FedEx Ground lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 5.

6. Paragraph 6 of the Complaint contains no allegations as to FedEx Ground and therefore does not require a response by FedEx Ground. To the extent a response is required, FedEx Ground lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 6.

7. Paragraph 7 of the Complaint contains no allegations as to FedEx Ground and therefore does not require a response by FedEx Ground. To the extent a response is required, FedEx Ground lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 7.

8. FedEx Ground admits the allegations in paragraph 8 of the Complaint.

9. Paragraph 9 of the Complaint contains no allegations as to FedEx Ground and therefore does not require a response by FedEx Ground. To the extent a response is required, FedEx Ground lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 9.

10. Paragraph 10 of the Complaint contains no allegations as to FedEx Ground and therefore does not require a response by FedEx Ground. To the extent a response is required, FedEx Ground lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 10.

11. Paragraph 11 of the Complaint contains no allegations as to FedEx Ground and therefore does not require a response by FedEx Ground. To the extent a response is required, FedEx Ground lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 11.

12. Paragraph 12 of the Complaint contains no allegations as to FedEx Ground and therefore does not require a response by FedEx Ground. To the extent a response is required, FedEx Ground lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 12.

13. Paragraph 13 of the Complaint contains no allegations as to FedEx Ground and therefore does not require a response by FedEx Ground. To the extent a response is required, FedEx Ground lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 13.

14. Paragraph 14 of the Complaint contains no allegations as to FedEx Ground and therefore does not require a response by FedEx Ground. To the extent a response is required, FedEx Ground lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 14.

15. Paragraph 15 of the Complaint contains no allegations as to FedEx Ground and therefore does not require a response by FedEx Ground. To the extent a response is required, FedEx Ground lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 15.

16. Paragraph 16 of the Complaint contains no allegations as to FedEx Ground and therefore does not require a response by FedEx Ground. To the extent a response is

required, FedEx Ground lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 16.

17. Paragraph 17 of the Complaint contains no allegations as to FedEx Ground and therefore does not require a response by FedEx Ground. To the extent a response is required, FedEx Ground lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 17.

18. Paragraph 18 of the Complaint contains no allegations as to FedEx Ground and therefore does not require a response by FedEx Ground. To the extent a response is required, FedEx Ground lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 18.

19. Paragraph 19 of the Complaint contains no allegations as to FedEx Ground and therefore does not require a response by FedEx Ground. To the extent a response is required, FedEx Ground lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 19.

20. Paragraph 20 of the Complaint contains no allegations as to FedEx Ground and therefore does not require a response by FedEx Ground. To the extent a response is required, FedEx Ground lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 20.

21. Paragraph 21 of the Complaint contains no allegations as to FedEx Ground and therefore does not require a response by FedEx Ground. To the extent a response is required, FedEx Ground lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 21.

22. Paragraph 22 of the Complaint contains no allegations as to FedEx Ground and therefore does not require a response by FedEx Ground. To the extent a response is required, FedEx Ground lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 22.

23. Paragraph 23 of the Complaint contains no allegations as to FedEx Ground and therefore does not require a response by FedEx Ground. To the extent a response is required, FedEx Ground lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 23.

24. Paragraph 24 of the Complaint contains no allegations as to FedEx Ground and therefore does not require a response by FedEx Ground. To the extent a response is required, FedEx Ground lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 24.

JURISDICTION AND VENUE

25. FedEx Ground denies the allegations in paragraph 25 of the Complaint, except it admits that PJC's Complaint alleges patent infringement claims under Title 35 of the United States Code, that this Court has subject matter jurisdiction over this controversy under 28 U.S.C. §§ 1331 and 1338(a), and that venue is proper in the District of Delaware for purposes of this action only.

26. Paragraph 26 of the Complaint contains no allegations as to FedEx Ground and therefore does not require a response by FedEx Ground. To the extent a response is required, FedEx Ground lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 26.

27. Paragraph 27 of the Complaint contains no allegations as to FedEx Ground and therefore does not require a response by FedEx Ground. To the extent a response is required, FedEx Ground lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 27.

28. Paragraph 28 of the Complaint contains no allegations as to FedEx Ground and therefore does not require a response by FedEx Ground. To the extent a response is required, FedEx Ground lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 28.

29. Paragraph 29 of the Complaint contains no allegations as to FedEx Ground and therefore does not require a response by FedEx Ground. To the extent a response is required, FedEx Ground lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 29.

30. Paragraph 30 of the Complaint contains no allegations as to FedEx Ground and therefore does not require a response by FedEx Ground. To the extent a response is required, FedEx Ground lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 30.

31. FedEx Ground denies the allegations in paragraph 31 of the Complaint.

32. Paragraph 32 of the Complaint contains no allegations as to FedEx Ground and therefore does not require a response by FedEx Ground. To the extent a response is required, FedEx Ground lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 32.

33. Paragraph 33 of the Complaint contains no allegations as to FedEx Ground and therefore does not require a response by FedEx Ground. To the extent a response is

required, FedEx Ground lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 33.

34. Paragraph 34 of the Complaint contains no allegations as to FedEx Ground and therefore does not require a response by FedEx Ground. To the extent a response is required, FedEx Ground lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 34.

35. Paragraph 35 of the Complaint contains no allegations as to FedEx Ground and therefore does not require a response by FedEx Ground. To the extent a response is required, FedEx Ground lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 35.

36. Paragraph 36 of the Complaint contains no allegations as to FedEx Ground and therefore does not require a response by FedEx Ground. To the extent a response is required, FedEx Ground lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 36.

37. Paragraph 37 of the Complaint contains no allegations as to FedEx Ground and therefore does not require a response by FedEx Ground. To the extent a response is required, FedEx Ground lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 37.

38. Paragraph 38 of the Complaint contains no allegations as to FedEx Ground and therefore does not require a response by FedEx Ground. To the extent a response is required, FedEx Ground lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 38.

39. Paragraph 39 of the Complaint contains no allegations as to FedEx Ground and therefore does not require a response by FedEx Ground. To the extent a response is required, FedEx Ground lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 39.

40. Paragraph 40 of the Complaint contains no allegations as to FedEx Ground and therefore does not require a response by FedEx Ground. To the extent a response is required, FedEx Ground lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 40.

41. Paragraph 41 of the Complaint contains no allegations as to FedEx Ground and therefore does not require a response by FedEx Ground. To the extent a response is required, FedEx Ground lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 41.

42. Paragraph 42 of the Complaint contains no allegations as to FedEx Ground and therefore does not require a response by FedEx Ground. To the extent a response is required, FedEx Ground lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 42.

43. Paragraph 43 of the Complaint contains no allegations as to FedEx Ground and therefore does not require a response by FedEx Ground. To the extent a response is required, FedEx Ground lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 43.

44. Paragraph 44 of the Complaint contains no allegations as to FedEx Ground and therefore does not require a response by FedEx Ground. To the extent a response is

required, FedEx Ground lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 44.

45. Paragraph 45 of the Complaint contains no allegations as to FedEx Ground and therefore does not require a response by FedEx Ground. To the extent a response is required, FedEx Ground lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 45.

46. Paragraph 46 of the Complaint contains no allegations as to FedEx Ground and therefore does not require a response by FedEx Ground. To the extent a response is required, FedEx Ground lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 46.

47. Paragraph 47 of the Complaint contains no allegations as to FedEx Ground and therefore does not require a response by FedEx Ground. To the extent a response is required, FedEx Ground lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 47.

COUNT I – INFRINGEMENT OF U.S. PATENT NO. 5,223,844

48. FedEx Ground incorporates by reference its responses to paragraphs 1 through 47.

49. FedEx Ground denies the allegations in paragraph 49 of the Complaint, except it is admitted that (1) the public record reflects that U.S. Patent No. 5,223,844 (the "'844 Patent") is entitled "Vehicle Tracking and Security System" and has an issue date of June 29, 1993, and (2) a document purported to be a true and correct copy of the '844 Patent was attached to the Complaint as Exhibit A.

50. FedEx Ground denies the allegations in paragraph 50 of the Complaint, except it is admitted that the public record reflects that the '844 Patent is assigned to PJC.

51. To the extent paragraph 51 of the Complaint concerns defendants other than FedEx Ground, FedEx Ground lacks knowledge or information sufficient to form a belief as to the truth of the allegations regarding those defendants. The remaining allegations of paragraph 51 are denied.

52. To the extent paragraph 52 of the Complaint concerns defendants other than FedEx Ground, FedEx Ground lacks knowledge or information sufficient to form a belief as to the truth of the allegations regarding those defendants. The remaining allegations of paragraph 52 are denied.

JURY DEMAND

53. FedEx Ground admits that PJC demands a trial by jury in its Complaint.

PRAAYER FOR RELIEF

FedEx Ground denies any allegations in the Complaint not admitted. FedEx Ground denies that PJC is entitled to the requested relief or any relief from FedEx Ground. To the extent PJC seeks relief from the other defendants, FedEx Ground lacks knowledge or information sufficient to form a belief as to the truth of the demands as to those defendants as set forth in PJC's Prayer for Relief. FedEx Ground respectfully prays that PJC take nothing by this suit and that FedEx Ground recover its attorneys' fees and costs, pre-judgment and post-judgment interest, and such other relief, at law or in equity, to which FedEx Ground is justly entitled.

DEFENSES

FedEx Ground hereby asserts the following defenses with knowledge as to its own actions and on information and belief with respect to the actions of others, and without undertaking or otherwise shifting any applicable burdens of proof. FedEx Ground reserves the right to assert additional defenses, as warranted by facts learned through investigation and discovery.

FIRST DEFENSE - NON-INFRINGEMENT

1. FedEx Ground does not infringe, has not infringed, and does not and has not induced infringement or contributed to infringement of the '844 Patent under any theory, including literal infringement or infringement under the doctrine of equivalents.

SECOND DEFENSE - INVALIDITY

2. Each claim of the '844 Patent is invalid for failure to comply with one or more provisions of Title 35, United States Code, including but not limited to 35 U.S.C. §§ 101, 102, 103, 112 and 305.

THIRD DEFENSE - PROSECUTION HISTORY ESTOPPEL

3. By reason of the proceedings in the United States Patent and Trademark Office during both the prosecution of the application that resulted in issuance of the '844 Patent and the reexamination of the '844 Patent, as shown by the prosecution histories thereof, PJC is estopped, in whole or in part, from maintaining that FedEx Ground infringes or has infringed the '844 Patent.

FOURTH DEFENSE - INTERVENING RIGHTS

4. PJC's claims for relief concerning any claim added to the '844 Patent during reexamination or any claim substantively amended during reexamination are barred, in whole or in part, by the doctrine of intervening rights and/or 35 U.S.C. §§ 252, 307.

FIFTH DEFENSE - LIMITATION ON DAMAGES

5. The relief sought by PJC is barred in whole or in part by 35 U.S.C. §§ 286 and/or 287.

SIXTH DEFENSE - ADEQUATE REMEDY AT LAW

6. PJC is not entitled to injunctive relief because any alleged injury to PJC is not immediate or irreparable and PJC has an adequate remedy at law.

SEVENTH DEFENSE - LACHES

7. The United States Patent and Trademark Office issued the '844 Patent on June 29, 1993.

8. PJC did not bring suit against FedEx Ground until March 17, 2011.

9. PJC's claim for relief for infringement of the '844 Patent is barred in whole or in part under the doctrine of laches by virtue of the inexcusable delay in bringing suit against FedEx Ground and/or its suppliers.

COUNTERCLAIMS

Counterclaim-Plaintiff FedEx Ground hereby alleges with knowledge as to its own actions and on information and belief with respect to the actions of others the following counterclaims against Counterclaim-Defendant PJC. FedEx Ground reserves the right to assert additional counterclaims, as warranted by facts learned through investigation and discovery.

1. FedEx Ground is a corporation organized under the laws of Delaware with its principal place of business at 1000 FedEx Drive, Coraopolis, Pennsylvania 15018.

2. Upon information and belief, PJC is a limited liability company organized under the laws of Texas with its principal place of business at 777 Enterprise Drive, Hewitt, Texas 76643.

3. This Court has subject matter jurisdiction over these counterclaims pursuant to 28 U.S.C. §§ 1331, 1338(a), 1367(a), 2201, and 2202, and 35 U.S.C. §§ 1, et seq.

4. PJC has submitted to the personal jurisdiction of this Court.

5. Venue is proper because PJC brought this action and consented to venue.

COUNTERCLAIM ONE
DECLARATORY JUDGMENT OF NON-INFRINGEMENT

6. FedEx Ground repeats and realleges paragraphs 1–5 above as if fully set forth herein.

7. PJC purports to be the assignee and lawful owner of all right, title and interest in and to the '844 Patent, entitled "Vehicle Tracking and Security System", which issued on June 29, 1993.

8. PJC has sued FedEx Ground in the present action, alleging infringement of the '844 Patent. Thus, an immediate, real, and justiciable controversy exists between FedEx Ground and PJC with respect to the alleged infringement of the '844 Patent.

9. FedEx Ground does not infringe, has not infringed, and does not and has not induced infringement or contributed to infringement of the '844 Patent under any theory, including literal infringement or infringement under the doctrine of equivalents.

10. No claim of the '844 Patent can validly be construed to cover any product made, used, sold, offered for sale, or imported by FedEx Ground.

11. FedEx Ground requests a declaratory judgment that FedEx Ground does not infringe, directly or indirectly, any claim of the '844 Patent.

COUNTERCLAIM TWO
DECLARATORY JUDGMENT OF INVALIDITY

12. FedEx Ground repeats and realleges paragraphs 1–11 above as if fully set forth herein.

13. An immediate, real, and justiciable controversy exists between FedEx Ground and PJC with respect to the invalidity of the '844 Patent.

14. The '844 Patent is invalid for failure to comply with one or more provisions of Title 35, United States Code, including but not limited to 35 U.S.C. §§ 101, 102, 103, 112 and 305.

15. FedEx Ground requests declaratory judgment that the '844 Patent is invalid.

FEDEX'S PRAYER FOR RELIEF

FedEx Ground prays for the following relief:

1. that any and all relief requested by PJC, as set forth in PJC's Complaint, be denied and that the Complaint be dismissed with prejudice;

2. that FedEx Ground have judgment on its Counterclaims, including that this Court declare the '844 Patent invalid; that this Court declare that FedEx Ground has not infringed, directly or indirectly, the '844 Patent;
3. that this Court grant such other and further relief to FedEx Ground as this Court may deem just and equitable.

JURY DEMAND

FedEx Ground demands a trial by jury on all issues triable of right by a jury.

Dated: November 3, 2011

Respectfully submitted,

/s/ Ronn B. Kreps

Ronn B. Kreps (#0151142)
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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing pleading was served this 3rd day of November via the Court's ECF system upon all counsel of record that are registered ECF users.

/s/ Ronn B. Kreps

Ronn B. Kreps